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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

FILED
NOV 26 2013
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

STEPHEN AGUIAR, Plaintiff, v. ERIC WILSON, WARDEN, ET AL Defendants.	)	Civil Case No. 3:13CV783 42 U.S.C. §2241

MOTION FOR THE ISSUANCE OF AN ORDER FOR A PRELIMINARY INJUNCTION PENDING THE OUTCOME OF EXHAUSTING GRIEVANCE PROCEDURES

NOW COMES the Plaintiff, pro se, and upon complaint and supporting affidavit with attached exhibits, it is:

ORDERED that Defendant(s) Eric Wilson, Warden, et al, show cause in room ________ of the United States Courthouse for the Eastern District of Virginia at 701 East Broad Street, Richmond, Virginia 23219 on the ______ day of ______, 20_____, at ______ o'clock why a preliminary injunction should not issue pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enjoining the Defendant(s), their successors in office, agents, and employees and all other persons acting in concert and participation with them, from the ongoing and repeated interference with privileged communications between Plaintiff/Defendant and his attornies in violation of the attorney/client privilege and interfering with Plaintiff's access to the Courts.

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IT IS FURTHER ORDERED that effective immediately, and pending the hearing and dtermination of this order to show cause, the Defendant(s) Eric Wilson, Warden, et al, and each of their officers, agents, employers, and all other persons acting in concert and participation with them, are hereby prohibited from ongoing inspection of and interference with privileged communications between Plaintiff/Defendant and his attornies in violation of the attorney/client privilege and interfering with Plaitiff's access to the Courts so long as said parcels arriving at Federal Correctional Complex Petersburg addressed to the Plaintiff are identicle to the parcels in EXHIBIT A of this complaint from his attornies until such time that the ongoing injury ceases pending the outcome of the prison grievance process or it can be determined by this Court.

IT IS FURTHER ORDERED that the order to show cause, and all other papers and exhibits attached this application, be served on the aforesaid Defendant(s) at Federal Correctional Complex Petersburg, River Road, P.O. Box 90026 Petersburg, Virginia 23804 by:______________________________, 20__________.

Dated ____________________

____
United States District Court Judge

SWORN AFFIDAVIT OF STEPHEN AGUIAR

I, Stephen Aguiar, pro se, hereby swear the foregoing true under the penalties of perjury and put forth the following:

1. Mail room staff at Federal Correctional Complex Petersburg continue to inspect and examine Plaintiff's attorney/client privileged mail from attornies of record despite the parcels being adequately identified.

2. On October 16, 2013, October 22, 2013, and November 6, 2013 mail room staff opened and inspected privileged mail from Plaintiff's attornies of record. EXHIBIT A is attached copies of these parcels.

3. Following the October 16, 2013 violation, Plaintiff met with the mail room prison staff supervisor who informed Plaintiff that the parcels from his attornies do not meet the prison staff's interpretation of "adequately identified."

4. 28 C.F.R. §540.18 and §540.19 govern special and legal mail. EXHIBIT B is attached for the Court's viewing. Specifically, special mail procedures under §540.18(a) states, "The Warden shall open incoming mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. The correspondence may not be read if the sender is adequately identified on the envelope, and the front of the envelope is marked "Special Mail--Open only in the presence of the inmate." Although §540.18(a) does not readily define "adequately identified"

by definition, §540.19(b) provides guidance. It states, "The inmate is responsible for advising any attorney that correspondence will be handled as special mail only if the envelope is marked with the attorney's name[s] and an indication that the person is an attorney, (emphasis added), and the front of the envelope is marked "Special Mail-Open only in the presence of inmate"."

5. Plaintiff submits incoming parcels from his attornies meet the threshold of the "adequately identified" requirement in dispute. Plainitiff's attornies names are, in fact, marked on the envelope also identifying that they are, in fact, attorneys at law. Surely, the Plaintiff has met his burden and prison officials are blatently violating Plaintiff's rights under the law.

6. Program Statements 5265.14 (correspondence) and 5800.10 (mail management manual) provide directives for the Federal Bureau of Prison's employees special mail procedures and the interpretation of 28 C.F.R. §540.18 and §540.19. The Program Statements are attached as EXHIBIT C for this Court's viewing. The Program Statements are essentially a facsimile of 28 C.F.R. §540.18 and §540.19. The only significant difference is the Program Statements' explanations of a special mail requirements exception including a common sense approach to what may be subject to, "special mail handling," even if it does not meet all the requirements of special mail. With this in mind, even if, arguendo, the mail room staff's interpretation had merit, in this case it appears that prison officials have failed to apply its common sense approach objectives

as set forth in its own Policies.

7. On October 22, 2013 mail room staff again opened and inspected Plaintiff's privileged mail. Following this second violation, Plaintiff filed a complaint through the prison's grievance procedure. However, November 6, 2013 mail room staff once again opened and inspected Plaintiff's privileged legal mail and informed they will continue to do so forcing this Plaintiff to pray this Court will intervene to stop this immediate and ongoing harm until the prison grievance process has been exhausted and Plaintiff can his case before this Court to prohibit this ongoing injury.

WHEREOFF, Plaintiff asks this Court to act in the interest of justice so that Plaintiff can enjoy unfettered access to the Courts.

Under the pains and penalties of perjury I declare that the foregoing is true and correct.

Stephen Aguiar, Plaintiff
#03722-082
Federal Correctional Complex
P.O. Box 1000
Petersburg, Virginia 23804
November 18, 2013

CERTIFICATE OF SERVICE

I, Stephen Aguiar, hereby certify that I sent a copy of the foregoing document motion for the issuance of an order for a preliminary injunction pending the outcome of exhausting greivance procedures and all related documents,attachments, and supporting exhibits to Defendant(s) Eric Wilson, Warden, et al, at P.O. Box 90026 Petersburg, Virginia 23804 via United States Mail using the prison's legal mail procedure.

Under the penalty of perjury the foregoing is true and correct signed this 18th day of November, 2013.

Stephen Aguiar, Plaintiff
#03722-082
FCI Petersburg Medium
P.O. Box 1000
Petersburg, VA 23804